
CHAPTER 116: COMPATIBILITY AND PROTECTION FOR RESIDENTIAL USES AND PLACES OF ENTERTAINMENT

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SEC. 116.1. DECLARATION OF POLICY.

It shall be the policy of the City to protect existing Places of Entertainment from potential conflicts with adjacent and nearby residential development uses, provided that such Places of Entertainment are operated and maintained in accordance with all applicable federal, state, and local laws and regulations, including applicable noise restrictions. The City encourages the use by developers of residential projects of best available noise control technologies and best management practices whenever possible to reduce the potential for conflict with Places of Entertainment.

Furthermore, it shall be the policy of the City to protect the future residents of industrial, commercial, and mixed-use neighborhoods in which Places of Entertainment operate, by providing notification processes to inform such residents of the possible noise levels in such neighborhoods and by requiring design features in new residential construction to promote the compatibility of residential uses and entertainment uses in adjacent or nearby Places of Entertainment.

(Added by Ord. [70-15](#), File No. 141298, App. 5/21/2015, Eff. 6/20/2015)

SEC. 116.2. DEFINITIONS.*

For the purposes of this Chapter 116, the following definitions shall apply.

" **City**" means the City and County of San Francisco.

"Development Permit" means any land use permit or entitlement, including but not limited to any building permit, site permit, Conditional Use authorization, variance, or decision based on discretionary review of a proposed project, where the project meets at least one of the following criteria:

- (1) the project is subject to the Planning Department's requirement for a Preliminary Project Assessment for residential use, pursuant to Planning Department policy;
- (2) the project is subject to the Planning Department's requirement that a Pre-Application Meeting be held for new construction, pursuant to Planning Department policy; or
- (3) the project proposes a conversion of a structure from non-residential use to residential use.

"Place of Entertainment" is defined in Section 1060 of the Police Code.

"Project" means a structure for Residential Use, where the structure's exterior boundaries are within 300 radial feet of a Place of Entertainment that has been permitted for 12 or more consecutive months prior to the filing of the first complete application for a Development Permit for construction of the Project structure or for its conversion to Residential Use.

"Project Site" means the lot or lots on which a Project is located.

"Residential Use" means the use of any real property as a dwelling unit or units, regardless of whether it is a primary residence or a mixed use property.

"Transfer" means sale or lease.

"Transferee" means a purchaser or lessee of all or any portion of a structure for Residential Use, the exterior boundaries of which are within 300 radial feet of a Place of Entertainment, and includes but is not limited to the purchaser or lessee's partners, employees, assigns, successors, representatives, and heirs.

"Transferor" means an owner of a structure for Residential Use, the exterior boundaries of which are within 300 radial feet of a Place of Entertainment, who sells or leases all or any portion of the structure to a Transferee, and includes but is not limited to the owner's partners, employees, assigns, successors, representatives, and heirs.

(Added by Ord. [70-15](#), File No. 141298, App. 5/21/2015, Eff. 6/20/2015)

SEC. 116.3. EXEMPTIONS AND NONAPPLICATION.*

(a) This Chapter 116 does not supersede or limit any other provision of the Municipal Code, including but not limited to the Police Code, Building Code, Health Code and Planning Code, regarding the regulation and control of Nighttime Entertainment Uses as defined in the Planning Code.

(b) This Chapter 116 does not authorize a change in use or uses where such is otherwise controlled or prohibited by the Municipal Code or state or federal law.

(c) This Chapter 116 does not authorize the continuation or expansion of a nonconforming use where such is otherwise controlled or prohibited by the Municipal Code.

(Added by Ord. [70-15](#), File No. 141298, App. 5/21/2015, Eff. 6/20/2015)

SEC. 116.4. PROTECTION FOR EXISTING PLACES OF ENTERTAINMENT.

No establishment that has held a permit to operate as a Place of Entertainment within 300 radial feet of a building for which construction or conversion for Residential Use was completed on or after January 1, 2005, shall be or become a public or private nuisance on the basis of noise disturbance for a resident of that building, if the Place of Entertainment operates in compliance with the Municipal Code and the terms of its permits.

(Added by Ord. [70-15](#), File No. 141298, App. 5/21/2015, Eff. 6/20/2015)

SEC. 116.5. PLANNING DEPARTMENT NOTIFICATION TO PROJECT SPONSORS AND ACCEPTANCE OF DEVELOPMENT PERMITS.*

(a) The Planning Department shall maintain a list of permitted Places of Entertainment, available to the public on its website, received from and updated by the Entertainment Commission pursuant to Police Code Section 1060.5.

(b) Based on the list described in subsection (a), the Planning Department shall notify a sponsor of a proposed Project that the Project is within 300 radial feet of a Place of Entertainment at the earliest practicable time.

(c) For any application for a Development Permit submitted after the effective date of this Chapter 116, the Planning Department will not consider an application for a Development Permit to be complete until the following has occurred:

(1) pursuant to Section 116.7, the Entertainment Commission has provided written notification to the Planning Department either that the Entertainment Commission did not hold a hearing, or that it held a hearing and the Project sponsor attended the hearing; and

(2) pursuant to Section 116.7, the Entertainment Commission has provided written comments and recommendations, if any, or the time provided in this Section 116.7 for doing so has elapsed.

(Added by Ord. [70-15](#), File No. 141298, App. 5/21/2015, Eff. 6/20/2015)

SEC. 116.6. ACOUSTICAL MEASUREMENTS BY ENTERTAINMENT COMMISSION STAFF.*

(a) In addition to any acoustical analysis required by the Building Code, prior to any hearing by the Entertainment Commission on a Project pursuant to Section 116.7, Entertainment Commission staff may take exterior acoustical measurements of conditions at the Project Site, to determine normal daytime conditions, normal nighttime conditions when no performance is taking place at any Place of Entertainment within 300 radial feet of the proposed Project, and conditions during a performance at any Place of Entertainment within 300 radial feet of the proposed Project. The Project sponsor shall provide Entertainment Commission staff with reasonable access to the Project Site for this purpose. This information may be made available to the Entertainment Commission to inform the Entertainment Commission's consideration of the Project pursuant to Section 116.7.

(b) The acoustical measurements required by this Section 116.6 shall not constitute determinations or findings of the Entertainment Commission.

(c) A report of the acoustical measurements required by this Section 116.6 shall be forwarded to the Department of Public Health within five business days after the measurements are taken, and at least five business days prior to any Entertainment Commission hearing on the Project.

(Added by Ord. [70-15](#), File No. 141298, App. 5/21/2015, Eff. 6/20/2015)

SEC. 116.7. ENTERTAINMENT COMMISSION HEARING.*

(a) Prior to submitting an application for a Development Permit to the Planning Department, the Project sponsor shall notify the Entertainment Commission of its intent to submit such an application, and may provide materials describing the proposed Project.

(b) Upon receipt of the notice described in subsection (a), the Entertainment Commission shall determine whether to hold a hearing on noise issues related to the proposed Project and any Place of Entertainment within 300 radial feet of the proposed Project. The Entertainment Commission, or its staff as delegated by the

Entertainment Commission, may, in its discretion, determine that a hearing is not required, if the available evidence indicates that noise from the Place of Entertainment is not likely to create a significant disturbance for residents of the Project.

(c) If the Entertainment Commission determines that a hearing is required it shall hold that hearing within 30 calendar days after a Project sponsor provides notice to the Entertainment Commission pursuant to subsection (a). The Entertainment Commission, or its staff as delegated by the Commission, may extend this 30-day period for up to 15 additional days to accommodate scheduling conflicts between the Entertainment Commission and Project sponsor.

(d) For any such hearing:

(1) the Entertainment Commission shall invite any Place of Entertainment that is within 300 radial feet of the Project to attend the hearing and present evidence, including testimony, regarding noise issues related to the Place of Entertainment and the Project; and

(2) the Project sponsor shall attend the hearing and present evidence, including testimony, regarding current noise levels in the area of the proposed Project, including all acoustical analysis conducted to date; the Project's proposed noise attenuation features; other possible noise attenuation measures, including voluntary collaboration with the Place of Entertainment; the projected level of interior noise for residential units in the Project; and the Project sponsor's engagement or plans for engagement with the Place(s) of Entertainment.

(e) Within two business days after the Entertainment Commission holds a hearing pursuant to this Section 116.7, or if no hearing is to be held, within 30 calendar days after receiving notice pursuant to subsection (a) of this Section 116.7, the Entertainment Commission shall provide in writing to the Planning Department and/or Department of Building Inspection, as appropriate, a notice regarding whether a hearing was held and whether the Project sponsor attended the hearing, and shall provide written comments and recommendations, if any, pertaining to noise issues for the proposed Project, including but not limited to the following: (A) a report of any acoustical measurements taken pursuant to Section 116.6, and (B) any recommendations regarding whether Development Permits should be issued and whether conditions relating to noise attenuation should be imposed.

(f) The Project sponsor shall indicate its compliance with Section 116.7(b) on the face of any building plans submitted to the Planning Department and Department of Building Inspection.

(g) The Project sponsor shall include with its application for a Development Permit any date(s) on which an Entertainment Commission hearing on the proposed Project was held, and shall include a copy of any comments and/or recommendations provided by the Entertainment Commission regarding the proposed Project.

(h) For purposes of this Section 116.7, any required writing by the Entertainment Commission may be transmitted by electronic means.

(i) This Section 116.7 does not give the Entertainment Commission approval authority over any Development Permit.

(Added by Ord. [70-15](#), File No. 141298, App. 5/21/2015, Eff. 6/20/2015)

SEC. 116.8. DISCLOSURE REQUIREMENTS FOR TRANSFER OF REAL PROPERTY FOR RESIDENTIAL USE.

(a) **Disclosure Requirement.** Any Transferor shall provide a disclosure notice to any Transferee as follows:

(1) **Timing of Disclosure.** The Transferor shall provide the disclosure notice described in this Section 116.8 on a separate written document. This disclosure notice shall be provided as follows:

(A) for a lease, prior to the Transferee(s) signing the lease; and

(B) for a purchase agreement, at the time required by California Civil Code Section 1102.3.

(2) **Contents of Disclosure Notice.** The disclosure notice shall include a citation to this Chapter 116 and a statement containing substantially the following language in at least 12-point font, with appropriate terms to be inserted in place of the bracketed language:

"DISCLOSURE OF NEIGHBORING PLACE OF ENTERTAINMENT.

You are purchasing or leasing property that is adjacent or nearby to [name and address of the Place(s) of Entertainment]. This venue is an existing Place of Entertainment, as defined in Police Code Section 1060, which includes establishments such as live music venues, nightclubs and theaters. This establishment may subject you to inconveniences or discomfort arising from or associated with its operations, which may include, but are not limited to, nighttime noise, odors, and litter. One or more of the inconveniences or discomforts may occur even if the Place of Entertainment is operating in conformance with existing laws and regulations and locally accepted customs and standards for operations of such use. If you live near a Place of Entertainment, you should be prepared to accept such inconveniences or discomforts as a normal and necessary aspect of living in a neighborhood with mixed commercial and residential uses."

(3) **Copy of Chapter 116 to Be Provided.** The Transferor shall provide each Transferee with a copy of this Chapter 116 as is in effect when the disclosure notice required by this Section 116.8 is provided.

(4) **Affidavit of Disclosure.**

(A) **Contents of Affidavit.** The Transferor shall sign, upon penalty of perjury, an affidavit containing the following information, with appropriate terms to be inserted in place of the bracketed language, as specified:

- (i) the identity of the Transferor, and any entity on whose behalf the Transferor is acting;
- (ii) the identity of the Transferee;
- (iii) the address, including unit number, of the portion of the Project being transferred;
- (iv) whether the Transfer is a sale or lease; and
- (v) the following language:

"I have provided to the [purchaser or lessee] the disclosure required by San Francisco Administrative Code Chapter 116 . Attached is a true and correct copy of the notice provided to the [purchaser or lessee].

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on [date] in [city and state]."

(B) **Affidavit Transmitted to Entertainment Commission.** The Transferor shall transmit to the Entertainment Commission, by any means acceptable to the Entertainment Commission, the Affidavit and a copy of the disclosure notice provided to each Transferee; provided however, that the attachment need not also include a copy of the then-current text of this Chapter 116 . Upon request of the Transferee, the Transferor shall also provide a copy of this Affidavit, with an attached copy of the disclosure notice referenced in the Affidavit, to the Transferee.

(C) **Affidavits Available to the Public.** Pursuant to state and local law, upon request, the Entertainment Commission shall provide a copy of the Affidavit and attached notice to any member of the public, including a representative of a Place of Entertainment.

(5) **Covenants, Conditions & Restrictions for Condominium Projects.** If the Project will be subdivided into condominiums, the requirements of this Section 116.8(a) must be included as terms of the Covenants,

Conditions, & Restrictions ("CC&Rs") that will be filed with the State and that govern owners of the property. Upon request, a copy of the CC&Rs must be provided to the Planning Department.

(b) **Enforcement.** The Planning Department may enforce this Section 116.8 through the application of Planning Code Sections 176 and 176.1.

(c) **Complaints Regarding Failure to Provide Disclosure Notice.** Any member of the public, including any Place of Entertainment, may file a complaint with the Planning Department regarding a Transferor's failure to provide the notice required by this Section.

(Added by Ord. [70-15](#), File No. 141298, App. 5/21/2015, Eff. 6/20/2015)

SEC. 116.9. NOTICE OF SPECIAL RESTRICTIONS.*

At the time a proposed Project is approved a Notice of Special Restrictions (NSR) must be recorded with the Assessor-Recorder that states all of the restrictions of Section 116.8 and any other conditions that the Planning Commission or Department places on the property. The Planning Department may enforce the terms of the NSR, including but not limited to enforcement for any failure to comply with the provisions of Section 116.8, through the application of Planning Code Sections 176 and 176.1.

(Added by Ord. [70-15](#), File No. 141298, App. 5/21/2015, Eff. 6/20/2015)

SEC. 116.10. NO PRIVATE RIGHT OF ACTION AGAINST CITY.

This Chapter 116 shall not create any private right of action against the City. The City shall have no duty or liability based on any failure to achieve the disclosure required by this Chapter or based on the City's failure to enforce or prosecute pursuant to this Chapter.

(Added by Ord. [70-15](#), File No. 141298, App. 5/21/2015, Eff. 6/20/2015)

SEC. 116.11. PROJECTS FOR WHICH A FIRST CONSTRUCTION DOCUMENT HAS NOT BEEN ISSUED BEFORE THE EFFECTIVE DATE OF CHAPTER 116.*

For any proposed Project for which, as of the effective date of this Chapter 116, a Project sponsor has applied for a Development Permit but for which a first construction document, as that term is defined in Section 107A.13.1 of the Building Code, has not been issued, the following provisions shall apply:

- (a) The proposed Project shall be subject to this Chapter 116.
- (b) The Planning Department shall notify the Entertainment Commission and the Project sponsor as soon as practicable that the proposed Project is within 300 radial feet of a Place of Entertainment, to provide the Entertainment Commission with an opportunity to determine whether to hold a hearing pursuant to Section 116.7.
- (c) Notwithstanding subsection (a) above, any previously scheduled hearing on a Development Permit application for the Proposed project shall not be delayed by the Entertainment Commission's consideration of whether to hold a hearing pursuant to Section 116.7, or the Entertainment Commission's holding of such a hearing.
- (d) If the Entertainment Commission holds a hearing pursuant to Section 116.7 on a proposed Project, the Project sponsor shall immediately thereafter provide to the Planning Department and/or Department of Building, as appropriate, any date(s) on which the Entertainment Commission held a hearing and a copy of any comments and/or recommendations provided by the Entertainment Commission regarding the proposed Project.
- (e) If the Planning Department or Planning Commission has not received comments or recommendations from the Entertainment Commission about the proposed Project at the time of its review pursuant to Section

314 of the Planning Code, no additional review or rehearing of the proposed Project by the Planning Department or Planning Commission shall be required due to the absence of such comments or recommendations.

(Added by Ord. [70-15](#), File No. 141298, App. 5/21/2015, Eff. 6/20/2015)